

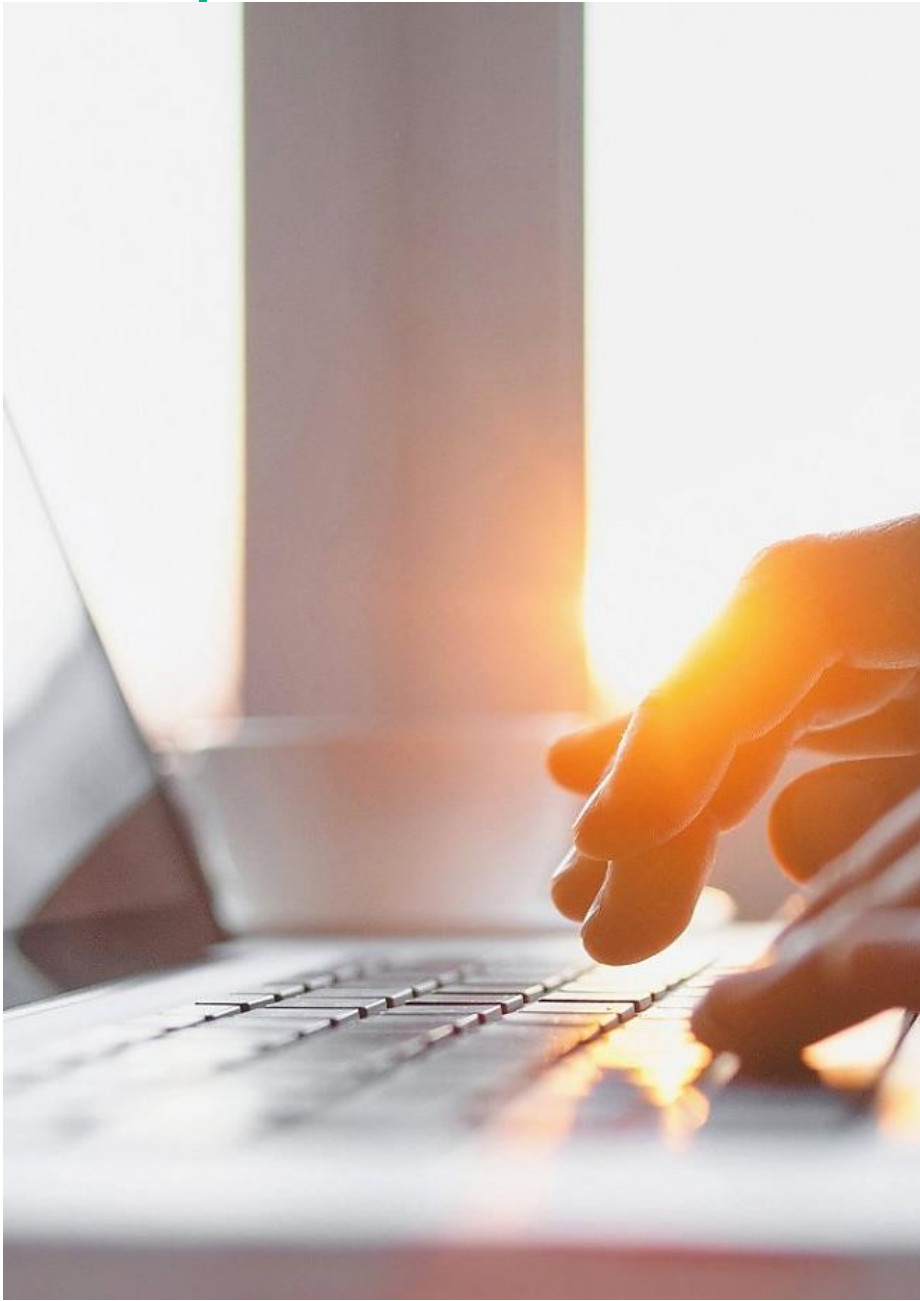
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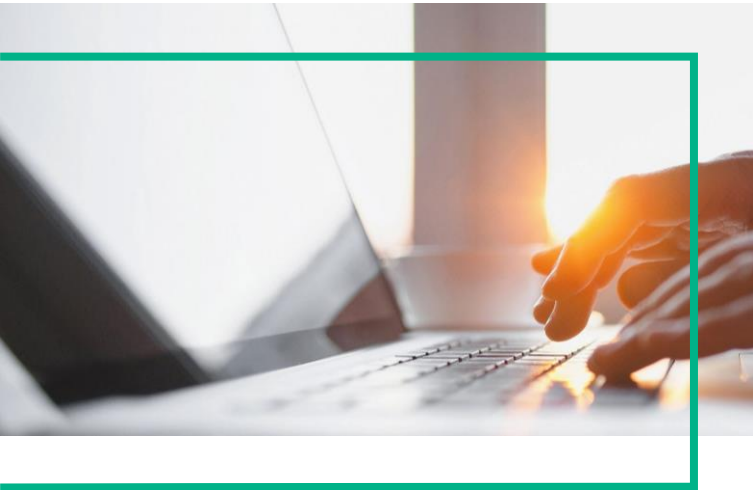
OCCUPATIONAL QUALIFIER

(PRESIDENTIAL DECREE NO. 96/22, DATED 2 MAY 2022)

VdA EXPERTISE



May 2022



Presidential Decree No. 96/22, dated 2 May 2022, has regulated the instructions for the preparation and application of the Occupational Qualifier in the exercise of labour activity, substantially densifying the level of information that must be included in this required internal management document.

In this flash you will learn about the main innovations of this new regime with impact on labour relations.

The new diploma applies to all employers covered by the General Labour Law, and the Occupational Qualifier is a required internal management tool for employers with more than 10 job positions with different functions.

By regulating the instructions for the elaboration and application of the Occupational Qualifier – an innovation in relation to the previous and now revoked Decree No. 70/01, of 5 October 2001 – the diploma specifies the methodology to be adopted and the information that must be included in the Occupational Qualifier.

Three (3) types of Occupational Qualifier are now established, at different levels:

- Own Occupational Qualifier (*Qualificador Ocupacional Próprio*): describes the specific jobs or functions of the employer, sector or sub-sector of activity;
- Collective Occupational Qualifier: describes the specific functions of a group of employers that are organized in a similar way by belonging to the same economic group, sector or type of activity or are linked to the Qualifier by means of a collective bargaining instrument;

- Occupational Qualifier of Reference – compilation of the existing functions in a sector of the national economy, created on the initiative of the Ministerial Department in consultation with stakeholders.

Occupational Qualifiers must be submitted to the General Labour Inspectorate ("GLI") for analysis and registration, although the lack of registration does not prevent the application of the Qualifier by the employer.

A negative opinion by the GLI on certain functions does not determine the invalidity of the employment contracts concluded based on the Occupational Qualifier.

According to the diploma, the Occupational Qualifier should group the job positions or functions into the following four (4) categories: (i) Workers; (ii) Administration and Services; (iii) Technicians; and (iv) Managers.

Likewise, the Occupational Qualifier must now provide a salary range ("functional band"/"banda funcional") between a minimum and maximum value to be applied to a group of functions of equal value existing in the organization, and the description of each job position must specify the respective functional band.

The diploma further establishes that the failure to comply with its provisions constitutes a contravention punishable with a fine: (i) from 5 to 10 times the average monthly salary practiced by the employer, if the employer does not have an Occupational Qualifier; and (ii) from 3 to 6 times the average monthly salary practiced by the employer, in case of non-compliance with the methodology established in the diploma for the elaboration of the Qualifier.

In case of relevant changes in the composition and organizational structure of the employer or in the description or requirements of the functions, the Occupational Qualifier must be revised and submitted to the GLI, and, without its assent, the Qualifier may not be applied, unless there is no response within 90 days of its submission.

The employers that already have one or that from now on will be required to have an Occupational Qualifier, as well as the entities that are created after the diploma enters into force, have a period of 12 months to conform to these rules and/or elaborate and apply the Occupational Qualifier.

It is thus expected that this diploma will have a significant impact in the current system of Occupational Qualifiers, as it details, in some cases thoroughly, and standardizes the methodology to be observed in their elaboration. Therefore, although it is established a period of 12 months for adaptation to the new rules foreseen in the Presidential Decree No. 96/22, it will be advisable that employers adapt and/or create, as soon as possible, new Occupational Qualifiers in accordance with the legal framework now in force.

Contacts



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